

**Wai'ola O Molokai
Molokai Public Utilities Inc
Mosco Inc
745 Fort St #600
Honolulu, HI 96813**

June 11, 2008

The Honorable Chairman and Members of the
Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, HI 96813
Attention: Stacey Kawasaki Djou, Esq.
Ms. Karen Higashi

FILED
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PUBLIC UTILITIES
COMMISSION

Re: In the Matter of Molokai Public Utilities, Inc. ("MPUI"), MOSCO, Inc. ("MOSCO")
and Wai'ola O Moloka'i, Inc. ("Wai'ola")

Dear Commissioners and Staff:

Thank you for your letter of June 5, 2008. The transition plan of the utilities is dependent on the response that we receive from the County of Maui or the State of Hawaii. As you know, the provision of water and sewage services is typically a County responsibility. We have proposed that the County accept this responsibility. We are fully prepared to turn over the operation of the utilities to the County at the end of August, and we trust that the Commission will accommodate this schedule because of the urgency of the circumstances. Both the County and the State have received ample advance notice of the need for them to take over the operation of the utilities' water and wastewater systems. Unfortunately the County has not taken any action and its progress up to this point has been minimal.

Although you have focused on the duty of the utilities to provide service to their customers, you have failed to take several things into consideration. First, the utilities have both a legal and an ethical obligation to pay its workers for services rendered, to pay any tax obligations it may incur, and to pay for goods and services it contracts for. The utilities will be unable to honor those obligations after the end of August, and will

have to discontinue operations. Is the Commission's position that these companies should continue to operate even when it means workers and taxes will go unpaid and fuel and electric power will be consumed when there is no way to pay for them? Who will be responsible for these obligations? Whatever our duty may be to continue to operate, the fact that the utilities will lack the financial capacity to do so is the most important aspect of the problem. The exhortations or the warnings in your letter can't change this basic fact. *

We do not agree with you that the utilities have a duty to service their customers when they are insolvent and unable to do so. We cannot find this in HRS Chapter 269, or anywhere else. Your letter cites no legal authority for the conclusion that service must be provided despite the inability to cover the costs of doing so. If you are aware of any statutory or decisional law concerning a duty to operate unprofitably and during insolvency, we hope that you will bring this to our attention. Such a principle would be an extreme departure from well-established legal principles concerning the duties of the directors of insolvent corporations, and we would expect the Hawaii Legislature to have explicitly stated such an unusual rule, if it was intended.

We believe that the financial information currently in your possession already contains most of the information that you have requested. Nevertheless, we intend to fully cooperate with respect to your request for information.

The attached schedule shows Molokai Properties Limited advanced the PUC companies a total of \$580,000.00 in fiscal year 07 and for the 11 months of 2008 a total of \$566,000.00 for operating and capital improvements. Advances were made on a weekly basis to ensure uninterrupted operation. Please contact Daniel Orodener, our General Counsel to discuss any additional requests.

We will gladly work with the County or any other third party to attempt to reach a negotiated value of the assets of the utilities so that its debts can be paid, and we are prepared to be flexible about this. Given the lack of profit potential in the utilities, we believe the prospect of finding a private third party to take over the operation and assets of the utilities is minimal.

We look forward to working with all parties to make this as orderly a transition as possible. There will be no interruption of services so long as government assumes its rightful role: to provide its citizens with essential services where they cannot be obtained through the private sector. We do not believe that threats of investigatory action or penalties are either warranted or productive. Regardless of anyone's preferences or posturing, the utilities can only do what they have the resources to do. They are required to operate in a way that takes into account their responsibility to customers and their responsibility to workers, electric utilities, taxing authorities, insurers, vendors and other entities that could go unpaid if the utilities operated when they lacked the ability to pay their bills. No amount of encouragement or warnings will create resources that do not exist, and your suggestion that operations must continue

when there is no money to pay for them comes close to insisting upon corporate dishonesty, or even criminality.

The solution is to find someone, most probably the County of Maui, who has the resources to continue these operations. We respectfully suggest that everyone's attention, including yours, should be turned in that direction.

A handwritten signature in black ink, appearing to read 'P.A. Nicholas', with a stylized, cursive script.

P.A. Nicholas
Director

c.c. Honorable Linda Lingle, Governor, State of Hawaii
Honorable Charmaine Tavares, Mayor of Maui
Chairperson Laura Thielen, Board of Land &
Natural Resources
Catherine Awakuni, Executive Director
Division of Consumer Advocacy, DCCA